

## EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In Re: )  
WINSTAR COMMUNICATIONS, INC., et al., )  
Debtors. ) 01-1430  
**ORIGINAL**

-----  
Wilmington, Delaware  
Monday, December 10, 2001  
2:30 p.m.  
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BEFORE: HONORABLE JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

PAULINE K. MORGAN, ESQ.  
YOUNG, CONAWAY, STARGATT & TAYLOR  
-and-

MARK SHAPIRO, ESQ.  
GEORGE WADE, ESQ.  
SCOTT SHELLEY, ESQ.  
SHEARMAN & STERLING  
(New York, New York)

-and-  
JEAN L. KIDDOO, ESQ.  
SWIDLER, BERLIN, SHEREFF & FRIEDMAN  
(Washington, D.C.)  
For the Debtor

STEPHEN KAROTKIN, ESQ.  
WEIL, GOTSHAL & MANGES  
(New York, New York)  
for DIP Lenders

RICHARD S. COBB, ESQ.  
KLETT, ROONEY, LIEBER & SCHORLING  
for DIP Lender, CitiCorp.

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(302) 658-6697



## Appearances, Continued:

CHRISTOPHER WARD, ESQ.  
THE BAYARD FIRM

-and-

JASON COHEN, ESQ.  
CADWALADER, WICKERSHAM & TAFT  
(New York, New York)  
For the Committee

MARK S. KENNEY, ESQ.  
U.S. TRUSTEE

LAURA DAVIS JONES, ESQ.  
PACHULSKI, STANG, ZIEHL, YOUNG  
& JONES  
For Kathleen Flaharty, et al.

FREDERICK B. ROSNER, ESQ.  
COZEN & O'CONNOR  
For Transamerican Tree Line

JENNIFER KELLEHER, ESQ.  
REED, SMITH  
For CIT

ANDREW S. MULLER, ESQ.  
CHADBOURNE & PARKE  
(New York, New York)  
For Wasco Funding Corp.

KATHLEEN M. MILLER, ESQ.  
SMITH, KATZENSTEIN & FURLOW  
For Fifth Street; Carlyle One; and  
Walnut Fidelity

LAURIE SELBER SILVERSTEIN, ESQ.  
POTTER, ANDERSON & CORROON  
For Certain Affiliates of  
SBC Communications

THEODORE TACCONELLI, ESQ.  
FERRY & JOSEPH  
For Salt Lake County

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(302) 658-6697

## Appearances, Continued:

WILLIAM E. CHIPMAN, JR., ESQ.  
GREENBURG, TRAUIG  
For Microsoft

DALE DUBE, ESQ.  
BLANK, ROME, COMISKY & MCCAULEY  
-and-

BENJAMIN CHEW, ESQ.  
PATTON, DOGGS  
(Washington, D.C.)  
for Velocita

CARL N. KUNZ, III, ESQ.  
MORRIS, JAMES, HITCHENS & WILLIAMS  
For Bush Street, M & S, Qwest,  
and Icon

PAUL BRENMAN, ESQ.  
BARRY KLAYMAN, ESQ.  
WOLF, BLOCK, SCHORR & SOLIS-COHEN  
(Philadelphia, Pennsylvania)

-and-  
ERICA WEINBERGER, ESQ.  
PAUL, WEISS, RIFKIND, WHARTON  
& GARRISON  
(New York, New York)  
For Viacom

LYNDALL HUGGLER, ESQ.  
BLUMLING & GUSKY  
(Pittsburgh, Pennsylvania)  
For Pyramid Consulting

MICHAEL P. MORTON, ESQ.  
-and-  
WILLIAM WHITE, ESQ.  
LEPON, MCCARTHY, WHITE & HOLZWORTH  
For Bell South

EDWARD DOLAN, ESQ.  
HOGAN & HARTSON  
For Tishman - Spieyer

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## Appearances, Continued:

EDWARD ROSENTHAL, ESQ.  
ROSENTHAL, MONHAIT, GROSS & GODDESS  
for AFC

JOHN DEMMY, ESQ.  
STEVENS & LEE  
For Cinema Media Partners

JAMES E. HUGGETT, ESQ.  
KLEHR, HARRISON, HARVEY, BRANZBURG  
& ELLERS

-and-

ERIC T. SMITH, ESQ.  
SCHNADER, HARRISON, SEGAL & LEWIS  
For L2S

DAVID STRATTON, ESQ.  
PEPPER, HAMILTON  
For Cisco Systems Capital Corp.

ROBERT DEHNEY, ESQ.  
MORRIS, NICHOLS, ARSHT & TUNNELL

-and-

SUSHEEL KIRPALANI, ESQ.  
MILBANK, TWEED, HADLEY & McCLOY  
(New York, New York)  
For Wintel Telecom Holdings

REBECCA L. BOOTH, ESQ.  
RICHARDS, LAYTON & FINGER

-and-

MICHELLE MORGAN HARNER, ESQ.  
JONES, DAY, REAVIS & HOGUE  
(Chicago, Illinois)  
For Lucent Technologies

ANDREW FLAME, ESQ.  
DRINKER, BIDDLE & REATH  
(Philadelphia, Pennsylvania)  
For Icon International

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## Appearances, Continued:

WILLIAM D. SULLIVAN, ESQ.  
ELZUFON, AUSTIN, REARDON, TARLOV  
& MONDELL

-and-

DOUGLAS JESSOP, ESQ.  
JESSOP & COMPANY  
(Denver, Colorado)  
For Univance

SCOTT ROSENBLATT, ESQ.  
REITLER, BROWN  
(New York, New York)

-and-

JEFFREY BERG, ESQ.  
LUCE, FORWARD, HAMILTON & SCRIPPS  
(West Los Angeles, California)  
For SGCL & Cyber Air

GAIL COOPERMAN, ESQ.  
SILLS, CUMMIS, RADIN, TISCHMAN,  
EPSTEIN & GROSS  
(Newark, New Jersey)  
For Qwest

KAREN OSTAD, ESQ.  
KELLEY, DRYE & WARREN  
(New York, New York)  
For Lightrade Co.

SELINDA A. MELNIK, ESQ.  
SMITH, KATZENSTEIN & FURLOW  
For Lexent Technologies

DANIEL K. HOGAN, ESQ.  
For 2323 Bryan Street

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MS. MORGAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. MORGAN: Pauline Morgan, Young, Conaway, Stargatt & Taylor, on behalf of the debtors, Winstar, Inc., and its affiliates.

To briefly run through the agenda, as you know, we are here today on our motion under Sections 363 and 105 for the sale of substantially all of our assets.

Your Honor, as you are aware, you previously approved bid procedures in connection with this motion on November 27th. That bid procedures order provided that bids were to be received on or before the 4th of December for any or all of the assets, and auction was to commence at 2 p.m. on the 5th. And we were hopeful, Your Honor, to be here with a white knight who would be able to buy this company for sufficient cash to pay distributions to creditors.

Unfortunately, Your Honor, the auction did not work out very well. We're here to sell only one asset, and that is the debtors'



1 interest in Office.com to CBS, successor in  
2 interest to Viacom. Office.com is one of the  
3 debtors in these cases.

4 The rest of the assets we were unable  
5 to find a bidder with the sufficient cash to make  
6 this work, and therefore, we will not be selling  
7 the remainder of the company today. So I wanted  
8 to first announce that. And we have tried, Your  
9 Honor to tell people as they were filing cure  
10 objections on Friday and Saturday that there was  
11 no need for them to appear today because we are  
12 not assuming and assigning any contracts today.  
13 So if there are people who are here believing that  
14 there is a cure issue to be resolved today, we  
15 will not be doing that. We have no buyer, and we  
16 therefore have no contracts to assign, again,  
17 other than our interest in the Office.com assets.

18 THE COURT: All right; thank you.

19 MS. MORGAN: Your Honor, before we  
20 get to the Office.com issue, we also will be  
21 presenting to Your Honor a motion for a temporary  
22 restraining order which was filed, I believe,  
23 about an hour ago. Mr. Wade of Shearman &  
24 Sterling

1 will be addressing the Court with respect to that.  
2 We are requesting that Your Honor issue an order  
3 preventing service buyers from precipitously  
4 turning off service. Our customers are not  
5 receiving the service that requisite notice  
6 requires.

7 Also, Mr. Shapiro will be addressing  
8 the Court from what we intend to do here forward  
9 also after the sale of Office.com assets.

10 Your Honor, if I may proceed. As I  
11 mentioned, we had a bid closing of December 4.  
12 The two qualified bids, one was from Cinema Media  
13 Partners, and one from Viacom, Inc., successor in  
14 interest to CBS. The debtors also allowed another  
15 bidder, Icon, to participate in the auction even  
16 though it had not yet submitted a qualified bid.  
17 In addition, they were permitted to auction by  
18 telephone.

19 Icon has filed an objection asserting  
20 among other things notice issues with respect to  
21 the auction. The debtors do believe that notice  
22 was given. It may have been a little late, but  
23 Icon was given as full an opportunity as possible  
24 to participate in the auction.

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1                   Your Honor, at the commencement of  
2                   the auction, Viacom made a statement on the record  
3                   that it believed its bid was the highest and best  
4                   offer, and that was at \$1.71 million, indicating  
5                   that the agreements with the debtors could not be  
6                   assumed and assigned absent Viacom's consent, and  
7                   they did not provide such consent.

8                   Our other qualified bid again was  
9                   from Cinema Media Partners bidders offer under the  
10                  advertising agreement which was estimated to be  
11                  \$7.8 million. At the conclusion of the auction on  
12                  the 5th, the debtors determined that the Cinema  
13                  Media bid was the highest and best bid.

14                  However, thereafter, we continued to  
15                  negotiate with bidders, including with Viacom, and  
16                  thereafter, Viacom agreed to increase its offer to  
17                  \$4 million cash payable at closing with the  
18                  closing to occur very quickly.

19                  The debtors in consultation with  
20                  their senior lenders determined that the bid  
21                  constituted the best offer for the Office.com  
22                  assets, and we are here today to hopefully have  
23                  Your Honor approve the sale to Viacom, Inc. of the  
24                  debtors' interest under that agreement.

1                   Your Honor, if I may brierly address  
2     the objections, one was filed by Viacom, that is  
3     before they knew they would be the highest and  
4     best offer. I assume that will be withdrawn. One  
5     was by Icon International, which objected among  
6     other things to notice issues. It's also my  
7     understanding that Icon is attempting to reserve  
8     some right today and not contest the transfer of  
9     assets to Viacom. If I may ask counsel to confirm  
10    that.

11                   MR. KUNZ: Good afternoon. Carl Kunz  
12    from Morris, James, Hitchens & Williams. I would  
13    like to introduce Andrew Flame from the Drinker,  
14    Biddle & Reath firm in Philadelphia, and would  
15    request he be admitted pro hoc vichae on behalf of  
16    Icon, Inc.

17                   THE COURT: Okay, thanks. I'll grant  
18    the motion.

19                   MR. FLAME: Andrew Flame, Drinker,  
20    Biddle & Reath. I appreciate you allowing me to  
21    be heard.

22                   Your Honor, I don't agree with all  
23    the comments made by counsel. Icon does believe  
24    it was a qualified bidder, was told it was a

1 qualified bidder. There were notice issues and  
2 issues during the auction, Your Honor. However, I  
3 do agree we had conversations with counsel for  
4 Icon to the extent that debtors today are seeking  
5 a sale of Viacom and not seeking to approve Cinema  
6 Media Partners as either the successful bidder or  
7 secondary bidder if Viacom fails to close, if  
8 Viacom fails to close and Cinema and Icon are left  
9 to bid.

10 THE COURT: All right, thank you.

11 MS. MORGAN: Your Honor, another  
12 objection was filed by L2S, Inc. L2S is a party  
13 to an agreement under which it provided on-line  
14 content and interactive business tools. Your  
15 Honor, we are not selling the content or the  
16 interactive business tools. We have so  
17 represented to counsel for L2S, and I believe  
18 based on that representation, L2S would withdraw  
19 its objection.

20 THE COURT: All right, it will be  
21 considered withdrawn.

22 MS. MORGAN: Thank you.

23 Your Honor, if I may proceed with a  
24 brief proffer of testimony.

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1 THE COURT: All right.

2 MS. MORGAN: In the courtroom is  
3 Stefan Feuerabendt, a managing director of  
4 Blackstone, LLP, who the debtors retained.  
5 Mr. Feuerabendt has extensive experience in the  
6 restructuring field, has previously been  
7 recognized as an expert in this case.  
8 Mr. Feuerabendt worked actively with debtors in  
9 their efforts to market the company and the assets  
10 including the Office.com assets. He is familiar  
11 with the debtors' financial affairs, and he was  
12 the person that conducted the sale on December 5th  
13 for the assets of Office.com.

14 Mr. Feuerabendt would testify that  
15 the debtors are in default under their debtor in  
16 possession finances, that despite their efforts to  
17 reduce costs, the debtors continue to operate at a  
18 loss. The debtors have no ability to obtain  
19 additional financing, and do not have sufficient  
20 cash to continue their operations. Assets not  
21 sold promptly including the debtors' interests  
22 under the advertising agreement with Office.com  
23 will decline in value if not sold promptly.

24 He would testify that Viacom is a

1 Fortune 500 company with significant economic  
2 resources. Viacom has advised the debtors that  
3 it would vigorously oppose to assign the  
4 advertising agreement to a third party, and  
5 according to Viacom's objection, had numerous  
6 legal arguments which could potentially be an  
7 impediment to the assumption of a third party.  
8 Debtor believes that even though they were to  
9 prevail upon this court to approve an assignment,  
10 Viacom would appeal the court's ruling to post the  
11 requisite bond for a state pending appeal, then we  
12 would not have the cash necessary to close.

13 The other bids, Your Honor, were  
14 contingent upon a final non-appealable order  
15 approving the assignment and requiring the closing  
16 be before January 31st. In light of Viacom's  
17 anticipated appeal, the debtors did not believe  
18 they could satisfy those conditions and thus were  
19 likely to not consummate a deal absent an  
20 expenditure of legal costs which it does not have  
21 the money to fund at this time.

22 Moreover, there's a risk that this  
23 court or an appellate court might find the  
24 provisions would not be approved.

1           The debtors' post-petition and  
2 pre-petition lenders have valid protected security  
3 interest in all the debtors' assets including the  
4 Office.com assets. In light of the ability for  
5 them to sell an amount to satisfy the DIP  
6 facility, the secured lenders are the only  
7 constituents, and the lenders have advised that  
8 they support the sale to Viacom.

9           Your Honor, Mr. Feuerabendt would  
10 also testify that the debtors' negotiations with  
11 Viacom and the other bidders were conducted at  
12 arms' length in good faith, and he would testify  
13 under the circumstances of this case, Viacom's  
14 purchase offer is fair and reasonable, and  
15 approval of the transfer of the debtors' interest  
16 in the advertising agreement to Viacom is in the  
17 best interest of the estate.

18           And that would conclude the proffer.  
19 Mr. Feuerabendt is available if the Court or any  
20 other party has questions.

21           THE COURT: Anybody wish to examine  
22 the witness?

23                   (No response.)

24           THE COURT: All right, the record



1 will be closed.

2 MS. MORGAN: In that event, we  
3 request with regard to the assets of Office.com  
4 under that advertising agreement that the Court  
5 approve that sale and overrule the objections.

6 THE COURT: All right.

7 MR. DEMMY: Your Honor, may I be  
8 heard on this matter?

9 THE COURT: Yes, you may.

10 MR. DEMMY: Good afternoon. John  
11 Demmy, Stevens & Lee. I'm here on behalf of  
12 Cinema Media Partners, one of the bidders that  
13 debtors' counsel referred to, whose bid, Your  
14 Honor, at the conclusion of the auction was  
15 determined to be the highest and best bid at about  
16 \$7.8 million.

17 Your Honor, my clients, Cinema Media  
18 Partners, and the debtor, Office.com, had entered  
19 into what we called a deal memo, an agreement  
20 prior to auction for my client to make its bid.  
21 Included in that agreement was the debtors'  
22 commitment to provide a break-up fee to my client  
23 of 3 percent of the purchase price plus expense  
24 reimbursement not to exceed \$50,000 if, in fact,

1 its stalking horse bid was topped in the process.

2 Your Honor, I would note that that  
3 agreement was entered into subsequent to the time  
4 this court entered the bid procedures motion order  
5 that established procedures for the conduct of the  
6 submission of bids and the auction in this matter.  
7 That order gave the debtors discretion and  
8 authority to grant bid protections to potential  
9 bidders in their discretion if they thought that  
10 would enhance the bidding process. Obviously they  
11 thought it would, because subsequently, the deal  
12 memo was executed and agreement to my client and  
13 the debtor which provided for the break-up fee I  
14 described.

15 We are at the point where the debtor  
16 is requesting the Court approve what it considers  
17 to be a higher and better bid by CBS. It is  
18 undisputed based on the facts outlined by debtors'  
19 counsel that the stalking horse bid provided value  
20 here for the debtors' estates. CBS was willing to  
21 bid approximately 1.7 at the outset of the  
22 process, at the end of the process it was willing  
23 to bid \$4 million, an enhancement as I see it of  
24 approximately \$2.3 million. We believe, Your

1 Honor, under the circumstances that Cinema Media  
2 Partners is entitled to a break-up fee which under  
3 the agreement as I said is 3 percent of the  
4 purchase price which is defined in the agreement  
5 as the \$7.8 million bid, which is approximately  
6 \$235,000, and also reimbursement not to exceed  
7 \$50,000.

8                   Unfortunately, the debtors have made  
9 no provision in the proposed order that it intends  
10 to present to the Court approving the sale for the  
11 payment of that break-up fee. I would request  
12 that the Court take the matter under advisement,  
13 and based on the transaction between the debtor  
14 and my clients, Cinema Media, that it award the  
15 break-up fee as the parties agreed to and is  
16 authorized by the Court's bid procedures order.

17                   THE COURT: All right.

18                   MR. DEMMY: Thank you, Your Honor.

19                   MS. MORGAN: Your Honor, at the bid  
20 procedures hearing, the debtors did reserve the  
21 right to come back to the Court. I think the  
22 Court said it would be available to hear any  
23 emergency motion for authorization to pay a  
24 break-up fee. We did not come before the Court,

1 so the Court has not approved it.

2 Your Honor, by the time we signed  
3 this agreement with Mr. Demmy's client, it was, I  
4 believe, the day of the auction. We proceeded to  
5 have it, we did not think we could get that  
6 approved before the auction occurred. Mr. Demmy's  
7 client participated in the auction, did not  
8 protect that demonstration even though the  
9 break-up fee was not approved by Your Honor, so I  
10 don't think it's appropriate to carve out any  
11 proceeds for a break-up fee. I think  
12 Mr. Demmy's client has a right to assert a claim  
13 be it under 503 or any other section for that  
14 break-up fee, but I don't think the Court has  
15 approved it, and it should not be approved today.

16 THE COURT: Anyone else wish to be  
17 heard?

18 MR. DEMMY: Just briefly in response  
19 to that argument. We acknowledged that the debtor  
20 did not specifically seek approval, but we believe  
21 we should not be penalized for not having  
22 sufficient time prior to auction or during the  
23 process to seek that from the Court specifically.  
24 We feel we aided the process, enhanced the

1 ultimate return to the estate, and we should be  
2 rewarded with that in accordance to the agreement  
3 we reached with the debtor.

4 THE COURT: Anyone else wish to be  
5 heard on this issue?

6 MR. KAROTKIN: Stephen Karotkin,  
7 Weil, Gotshal & Manges for the DIP lenders.

8 Your Honor, I was here at the time  
9 you approved the bidding procedures, and it is  
10 absolutely true that the debtor said it would come  
11 back to court in the event it wanted any break-up  
12 fee or other protections for stalking horse is  
13 approved. No motion was filed, no hearing was  
14 held.

15 It's well said in this district and  
16 others break-up fees must be approved by the  
17 Court, they're not ordinary course of business.  
18 We believe a break-up fee would affect, even  
19 absolutely prime the DIP loan, and that's  
20 inappropriate under the circumstances.

21 To the extent that this bidder  
22 believes it's entitled to anything, it can file a  
23 substantial cross motion in connection with the  
24 case, and the Court can rule on it at that time,

1 and of course we would reserve our right to object  
2 to that as well. Thank you.

3 MS. DAVIS JONES: Good afternoon,  
4 Your Honor.

5 THE COURT: Good afternoon.

6 MS. DAVIS JONES: Laura Davis Jones,  
7 Pachulski, Stang, Ziehl, Young & Jones, here on  
8 behalf of Kathleen Flaherty, Stuart Rekant, Rick  
9 Neilds, and Rick Uhl.

10 We have an objection to the sale  
11 going forward unless a prior order that was  
12 entered by this court in connection with the  
13 employee retention and severance program is either  
14 complied with or the dollars that are required to  
15 be paid under that order are escrowed to cover the  
16 obligations that are set forth in that order.

17 Hopefully you've seen our papers and  
18 reviewed them. We have individuals here who were  
19 the former senior executives of the company who  
20 were encouraged to stay by promises of a retention  
21 program. They relied on those promises, and they  
22 relied on the court order, and they stayed with  
23 the company. Those promises were made by the  
24 debtors but also were supported with the

1 intentional knowledge of the lenders.

2 Your Honor, the individuals have  
3 provided much benefit to the estate during the  
4 time they have stayed with the company. Your  
5 Honor, they were an integral part of at least \$50  
6 million of value coming into the company, and I  
7 can offer Your Honor, if you wanted to hear it  
8 today, specific testimony on that point. But  
9 importantly, we have a situation where the  
10 payments that are required to be made pursuant to  
11 a court order have not been made, and they have  
12 been informed they will not be made.

13 Your Honor, it appears we have a  
14 situation where we have very sophisticated senior  
15 people skills who were used to the point they  
16 believe necessary, and then were just discarded.  
17 And they're not being paid. Your Honor, there is  
18 money in the bank here, my understanding is as of  
19 today we're talking about \$6 million in the bank,  
20 there are receivables that are collectible. There  
21 is a way for lenders and the debtors to take care  
22 of these individuals who by their efforts stayed  
23 with the company and brought value to this company  
24 and indeed are an integral part that the debtor is

1     able to stand here today with a deal to present to  
2     the Court.

3             Your Honor, we would ask that either  
4     the sale not be approved until a resolution of  
5     this matter can be had, or that at that time a  
6     minimum that the dollars that are owed to these  
7     individuals be escrowed. The dollar amount  
8     relative to this size of the case is small, it's  
9     approximately \$1.1 million, but to these  
10    individuals it's huge. Your Honor, we'd ask for  
11    that relief to be granted.

12            THE COURT: All right, thank you.

13            MS. MORGAN: Your Honor, these people  
14    were not discarded. The debtors were operating  
15    under extreme financial distress and were cutting  
16    costs and they were forced to lay off numerous  
17    employees, including Ms. Jones' clients.

18            Your Honor, what Ms. Jones has is  
19    essentially a 506(c) claim to the proceeds. With  
20    the Headhouse decision, an individual creditor has  
21    no way to assert the 6(c) claim. The debtor in  
22    this case has waived the 6(c) case asserting any  
23    lien entitlement to the proceeds of this sale.  
24    Her clients are potentially administrative



1 creditors. So there are set-offs at stake as  
2 well. They like other creditors may have  
3 administrative claims, but they have no  
4 entitlement to the liens of this sale. We believe  
5 that objection should be overruled.

6 THE COURT: Anyone else wish to be  
7 heard?

8 MS. DAVIS JONES: Your Honor, if I  
9 may, I'm not seeking a 506(c) claim as we sit here  
10 today. We are asking them to pay their  
11 administrative claims, not to enjoy the benefit of  
12 Chapter 11. We're in a situation where they're  
13 seeking to enjoy the benefits of the sale, and  
14 they should not be able to do this on the backs of  
15 these senior executives. We ask that until that  
16 money is escrowed or some other arrangement is  
17 made so that that money comes out of the proceeds  
18 today, it should not be approved, Your Honor.

19 MR. KAROTKIN: Again, very briefly,  
20 Your Honor. We would agree with Ms. Jones that  
21 administrative expenses are supposed to be paid  
22 and, in fact, super-priority expenses are supposed  
23 to be paid first. And we are unfortunately in a  
24 very sad situation here with my client's DIP loan

1 more likely will not be paid in full, and our  
2 clients are looking at a substantial deficiency.

3 In connection with the retention plan  
4 and the severance plan under which her clients  
5 have severance claims, there were specific  
6 negotiations as to whether or not that should be  
7 part of the carve out, and they were not, and that  
8 was a negotiated item, and the debtor requested  
9 that that be made. It was not agreed to; the  
10 order approving it did not provide for any carve  
11 out. As I said, our clients will have a  
12 substantial deficiency claim on the DIP loan, it  
13 is an unfortunate decision, it is a super-priority  
14 claim as ordered by the Court, and there should be  
15 nothing imposed on that.

16 MS. DAVIS JONES: My only comment is  
17 then this debtor should not be in Chapter 11, Your  
18 Honor.

19 MS. MELNIK: Good afternoon, Your  
20 Honor. Selinda Melnik, Smith, Katzenstein &  
21 Furlow, for Lexent.

22 We had filed an objection to the  
23 overall sale that I would like to put to this  
24 particular aspect of the sale, as well, sort of on

1 the back of what Ms. Davis Jones was saying. We  
2 are in a similar situation where Your Honor  
3 previously had by court order approved a  
4 stipulation between the debtor and Lexent to  
5 satisfy a dispute over \$8.5 million in mechanics  
6 liens, part of which settlement was the debtors'  
7 obligation by Your Honor's order to pay to Lexent  
8 half a million dollars in each of four months  
9 beginning with November 1st. Those payments  
10 haven't been made.

11 We similarly would like to see funds  
12 escrowed to take care of that prior obligation  
13 that the debtors undertook at the cost of our  
14 releasing additional claims which have certainly  
15 benefitted the estate, and would request very  
16 similar relief to that that Ms. Davis Jones has  
17 requested of Your Honor with regard to this sale,  
18 and its ability to either go forward or to ensure  
19 that these funds be put aside and paid. The order  
20 Your Honor entered called for the immediate  
21 payment, not payment at the end of the case. That  
22 was heavily negotiated for obvious reasons, and we  
23 would like to see that order fulfilled. Thank  
24 you.

1 MS. MORGAN: Your Honor, I have not  
2 much to add other than we're in a very unfortunate  
3 situation, as Mr. Karotkin stated. Senior super-  
4 priority claims are not getting paid in full.  
5 There is certainly no level of one person's  
6 administrative claims over others, and we believe  
7 there are a lot of people that have administrative  
8 claims in this case that may not be paid.

9 THE COURT: All right. Any other  
10 objections to the Office.com transaction?

11 MS. MORGAN: I'm sorry, Your Honor.  
12 I had forgotten I agreed to put on the record we  
13 are not selling any assets of Microsoft, including  
14 the alliance agreement.

15 THE COURT: Okay. Anyone else?

16 (No response.)

17 THE COURT: All right. Do we have  
18 any other matters?

19 MS. MORGAN: Your Honor, may I hand  
20 up an order on Office.com?

21 THE COURT: Yes.

22 MS. MORGAN: Thank you.

23 MS. MORGAN: Your Honor, I'd like to  
24 turn the podium over to Mr. Shapiro regarding what

1 will happen with the rest of the case.

2 THE COURT: With regard to all the  
3 objections that have been filed against the sale  
4 as presented today with the Office.com  
5 transaction, all the objections will be overruled  
6 except Mr. Demmy's client and the debtors' order  
7 to escrow \$250,000 until that issue can be further  
8 considered, that is the break-up fee issue.

9 MR. DEMMY: Your Honor, just to  
10 clarify, is it the Court's expectation we'll file  
11 a motion so that the Court will rule --

12 THE COURT: That's what I'm expecting  
13 you to do, then I can rule on the application.  
14 Other applications by objection, they have been  
15 overruled finding that they're basically  
16 administrative claims in this now Chapter 11.  
17 Yours is a little different situation because we  
18 had spoken about the possibility of approving such  
19 a position as your client took, and so we put the  
20 funds aside until we can flush out whether your  
21 client is in a position to take advantage of the  
22 agreement reached without a court order.

23 MR. FLAME: Andrew Flame for Icon  
24 International. I assume Your Honor is also

1 preserving Icon's right --

2 THE COURT: Your rights are reserved  
3 if Viacom doesn't settle, you're not able to come  
4 back in the position you now have.

5 MR. FLAME: Thank you.

6 MR. SHAPIRO: Good afternoon, Your  
7 Honor; Mark Shapiro.

8 Your Honor approved a set of bidding  
9 procedures on November 27th which approved a  
10 deadline under a very, very expedited time frame  
11 to seek qualified bids for a sale of substantially  
12 all of the assets of Winstar Communications. The  
13 bid deadline was November 4th at 5:00 p.m. The  
14 auction was to be held the next day at 2:30 at  
15 Shearman & Sterling, then we set a hearing today,  
16 assuming we had a successful auction.

17 I'd like to report to the Court the  
18 results of this process.

19 The debtor received four written  
20 contracts for the purchase of the assets of the  
21 company. The debtors provided a copy of the  
22 contracts and any demonstration of the financial  
23 ability of any of these transactions, the ability  
24 to consummate these transactions to Blackstone,

1 who is the debtors M & A advisor, and to the  
2 agents for the DIP lenders and the pre-petition  
3 lenders, and also shared non-confidential  
4 information with Lucent Technologies, an asserted  
5 security creditor.

6 After considering all these bids,  
7 each of which had a portion of consideration of  
8 cash and a portion of consideration in the form of  
9 note to be issued by the purchasing entity which  
10 owned the assets plus the assumption of certain  
11 pre-petition and post-petition arrearages as it  
12 related to contracts assumed to be assigned, the  
13 debtor offered to two bidders who were determined  
14 to be the highest and best at that point, the  
15 first being a bidder group called SGC Laird, and a  
16 second called Wintel Telecom, or otherwise known  
17 as the Lawrence Zimmerman group.

18 We did so in order to clarify those  
19 offers, and more importantly to determine whether  
20 either of those groups had the financial  
21 wherewithal to both consummate the purchase price  
22 portion, the cash portion of the transaction as  
23 well as to determine whether, because they were  
24 giving notes to the estate, whether they had the

1 ability to continue to operate the company both  
2 between the time of the approval of the sale and  
3 the time that the FCC approved the transfer of  
4 licensing, which could be two or three months, as  
5 well as to be able to run the company thereafter.

6 Both had provided the debtor with  
7 letters in the form of, I'll call it, for lack of  
8 a better term, commitment letters, although they  
9 didn't really go to true commitments, from off-  
10 shore investors in countries that generally, you  
11 know, it's hard to substantiate the ability of  
12 those people to provide the funds.

13 We shared all of that information  
14 with the DIP lenders and their advisors. The  
15 debtors then met with the SGC Laird group the  
16 evening we received their written bid to further  
17 clarify the bid to further understand whether we  
18 could get more transparency on their financing and  
19 their ability to consummate the transaction, and  
20 met with them late into that evening.

21 At that point in time, after  
22 discussing it amongst the debtors' advisors and  
23 the banks, we decided the only way we would ever  
24 know whether they would be able to consummate a



1 sale is to ask for a \$15 million dollars earnest  
2 money deposit which would be completely refundable  
3 in the case they overbid or was unable to  
4 consummate the transaction.

5 We informed SGC of that requirement  
6 that evening, and they told us they could try,  
7 they didn't make any assumptions, but they said  
8 they would try to see whether they could raise  
9 that cash.

10 We then met the next day briefly with  
11 the Zimmerman Group, and told them, again, that we  
12 were moving to the auction at that point with the  
13 SGC Laird Group being the best bid. The SGC Group  
14 was being asked to provide \$15 million in cash,  
15 and we told them we would be essentially requiring  
16 that of all bidders because at that point we could  
17 not establish the bona fides with respect to  
18 financing of any of the four bids we received.

19 At about 3:00, we mentioned the  
20 formal bid, and Arthur Neumann announced SGC was  
21 the highest and best bidder with an offer of \$50  
22 million in cash, \$50 million in notes, five  
23 percent of the common stock of the buyer, and  
24 assumption of certain pre-petition and

1 post-petition arrearages. This agreement, he  
2 announced, however, was required to be made  
3 subject to a definitive contract being entered  
4 into as of 9:00 a.m. last Friday as well as \$15  
5 million of cash to be deposited as earnest money.

6 Neumann said they would take a break  
7 and discuss any other offers, at which point we  
8 took a short recess which turned out to be a  
9 seven-hour recess, from 3:00 to 9:30, to work with  
10 the bidding groups to see if their bids could be  
11 increased or see if they had any money behind  
12 their bids.

13 After meeting with the Zimmerman  
14 Group over the course of that afternoon and  
15 evening, the Zimmerman Group improved their offer.  
16 That offer was improved to \$85 million in cash and  
17 warrants for three percent of the common stock of  
18 the buyer, and again the assumption of certain  
19 liabilities. And after discussion, again, we went  
20 back to all the groups to see whether we could do  
21 any better.

22 At 9:30 it was announced that subject  
23 to reaching a definitive contract by 9:00 a.m.  
24 Friday morning, and subject to the Zimmerman Group

1 posting the \$15 million in cash, earnest cash  
2 deposit by 9:00 a.m. on Friday morning, that the  
3 Zimmerman Group would be the highest and best bid,  
4 and we would take that bid to the Court today.

5           Unfortunately, Your Honor, the  
6 deposits were not made. Now, we spent the better  
7 part of Friday speaking to the Zimmerman Group  
8 about whether they were, in fact, able to make  
9 those deposits. We did everything possible to  
10 determine that it did not appear likely that that  
11 money was forthcoming. We also were in constant  
12 communications with the other group, the SGC Laird  
13 Group, to see, in fact, if they would post \$15  
14 million, because as I said, we had required at the  
15 auction anyone who was going to appear here today  
16 be required to post \$15 million in cash. That  
17 would at least establish the bona fides of anyone  
18 who was a real bidder.

19           Friday came and went, and no deposits  
20 arrived. I did receive calls over the weekends  
21 from the lawyers of both groups telling me there  
22 was some chance they would be able to raise the  
23 money. My answer was, you know, let me know when  
24 it arrives, we've given you wire transfer accounts

1 to the Shearman & Sterling group. Unfortunately,  
2 again, that did not happen, and as of the moment  
3 we walked into this courtroom, I checked and we  
4 had not received any moneys on deposit.

5 So at this point, Your Honor, we have  
6 no winning bidder, we have no one who appears to  
7 have the financing necessary to consummate this  
8 transaction. As Your Honor knows, we did move  
9 this process along on an expeditious time frame  
10 because of the debtors' inability to fund itself.  
11 At this point, the banks are not willing to allow  
12 the debtors to continue to use cash collateral.  
13 We have made payroll payments so that the  
14 employees will be paid through Friday. That's  
15 what I've been told by Impala Partners. But  
16 beyond that, there is no authority whatsoever for  
17 us to use any cash to do anything.

18 At this point, it is likely that the  
19 debtors are going to be terminating essentially  
20 all of its employees, which is obviously quite  
21 unfortunate, especially at this time of year, and  
22 I believe at this point the board has authorized  
23 me to convert the case to Chapter 7 in the next 24  
24 hours and give us one day to figure out the best

1 way to do that given the complexity of this  
2 regulated company.

3 THE COURT: All right, thank you.

4 MR. KIRPALANI: Good afternoon, Your  
5 Honor. Susheel Kirpalani from the firm Milbank,  
6 tweed, Hadley & McCloy.

7 I'd like to thank the Court for the  
8 opportunity to speak. We represent the Wintel  
9 Telecom Holdings Group, the group held by Lawrence  
10 Zimmerman, who is here in the courtroom today.

11 Your Honor, there was indeed an  
12 auction, there was indeed, as Mr. Shapiro pointed  
13 out, a very expedited auction process. That  
14 process was a bit of a moving target, for lack of  
15 a better word. It started as a process which  
16 invited bidders to come in and do due diligence on  
17 a very expedited timetable with the hope of taking  
18 over expenses as of January 1st, January 2nd, of  
19 the company, and providing kind of a net result to  
20 the DIP lenders. And this structure changed over  
21 the course of the auction procedure, it changed  
22 over the course of the negotiations, and no one is  
23 faulting anyone for that. It certainly was a very  
24 complicated procedure and a very complicated

1 contract to negotiate.

2 The Wintel Telecom Holding Groups did,  
3 as Mr. Shapiro pointed out, did submit a  
4 qualifying offer, we did turn up at the auction,  
5 we did in fact win the auction. These conditions  
6 about submitting earnest money by 36 hours after  
7 the auction were imposed on all bidders in the  
8 same fashion, and everyone has used their best  
9 efforts to try and comply with that, Your Honor.

10 We are here today in the courtroom, I  
11 believe the SGC Laird group is also here in the  
12 courtroom. There are a lot of jobs at stake, Your  
13 Honor, and there is an entire industry here, Your  
14 Honor, at stake. We understand the Court's  
15 ability and limitations over whether they can  
16 force secured lenders to allow the use of cash  
17 collateral for another week, Your Honor, but, you  
18 know, my client, the Wintel Telecom Holding Group  
19 is confident that if this company is allowed to  
20 liquidate and shut down and terminate service and  
21 all these jobs are lost and all these customers  
22 lose their service, the value of assets in this  
23 company will be forever lost.

24 We ask the Court to adjourn this sale

1 hearing for a week, Your Honor. We will submit  
2 what we believe are our earnest deposits before  
3 that time, and we would like to come to Your Honor  
4 a week from today and put what we hope is an  
5 earnest bid that no longer is a moving target.

6 With respect to comments Mr. Shapiro  
7 made, we were not made aware that SGC Laird Group  
8 never offered to submit a \$15 million deposit and  
9 rather there was a condition that was imposed upon  
10 them and they would use their best efforts to get  
11 there. At the auction, it was made clear on the  
12 record that there was that offer by SGC Laird, and  
13 quite frankly, it's to no one's fault. Everyone  
14 was trying to work very fast and very hard to make  
15 sure secured lenders didn't go out of pocket and  
16 lose further funding. But it was never known to  
17 the groups in advance. We only got notice of the  
18 auction around the Thanksgiving break.

19 The \$15 million or any amount of the  
20 earnest deposit was first made known to all  
21 bidders 36 hours prior to the deadline for that  
22 auction, and all the parties have been flying  
23 around the country to try to liquefy their credit  
24 facility. As you recall, this purchase was

1 supposed to take place in January when the buyer  
2 would take on all expenses of operating the  
3 business going forward, take on a great risk. And  
4 Wintel Telecom is still willing and able and ready  
5 to do that. It has taken a great deal of work to  
6 liquefy \$15 million, we tried to do that, and  
7 we're confident we could do it within one week  
8 from today. We would implore the Court to delay  
9 this and not permit immediate layoffs of almost a  
10 thousand employees just before Christmas.

11 Thank you, Your Honor.

12 MR. SCHEINER: Your Honor, this is  
13 Stan Scheiner. I'm not sure if this is the right  
14 time to make a statement, but at this time, I'd  
15 like to.

16 THE COURT: All right. There's one  
17 more party that's approached the podium. You may  
18 want to wait until after we've heard from them.

19 MR. SCHEINER: That's fine; sorry.

20 MS. ROMERO: Your Honor, this is  
21 Martha Romero on the phone, and it's hard to hear  
22 everything that's going on, but at this point I  
23 would like to object to the sale.

24 THE COURT: Have you heard there's no



1 sale?

2 MS. ROMERO: No, Your Honor, I have  
3 not. Has the sale been postponed, Your Honor?

4 THE COURT: Well, kind of. You  
5 represent San Diego County?

6 MS. ROMERO: Correct.

7 THE COURT: I think probably for your  
8 purposes, today's proceeding doesn't implicate the  
9 interests that you put forth in your papers  
10 because there's no sale to be considered at this  
11 time.

12 MS. ROMERO: Okay, thank you, Your  
13 Honor.

14 THE COURT: If something else  
15 happens, I'm sure you'll get notice again.

16 MS. ROMERO: Okay, thank you, Your  
17 Honor.

18 MR. ROSENBLATT: Good afternoon, Your  
19 Honor. Scott Rosenblatt of the firm of Reitler,  
20 Brown. I represent SGC Laird, the other bidding  
21 party, who is still quite interested in making the  
22 acquisition it was contemplated by the sale  
23 proceedings. I support for the most part the  
24 comment made and the requests made by counsel to

1 the competing bidding party, with adding one small  
2 note.

3 I understand from the earlier  
4 presentation by debtors' counsel that there will  
5 be a motion made with respect to an injunction to  
6 prevent disconnection to facility services to the  
7 company, and obviously as a potential bidder who  
8 would like even a small leave of time to put  
9 together the earnest money in the form of a  
10 deposit of the purchase price, we certainly hope  
11 to have positive in the results in the injunction,  
12 because the going amount is closely tied to the  
13 provision of those services, and the disconnect  
14 would obviously make this a pile of assets as  
15 opposed to a working network.

16 As to the issues raised by competing  
17 bidder, we are also attempting on the rather short  
18 notice to compile the requisite fund for the  
19 deposit. The bidding procedures did not contain a  
20 deposit and did not have notice to compile those  
21 funds in advance. We thought we would close as  
22 early as the end of December and we were moving  
23 towards that goal. Our funding sources had relied  
24 upon a December 14th date which should have been

1 adequate in contemplating a sale at the end of  
2 December, but the moving up of schedule was not  
3 contemplated in the bidding procedures or our  
4 plans, and it unfortunately was outside of our  
5 control to secure the funding on such a sped up  
6 basis.

7 Your Honor, we also ask that there is  
8 some form of delay, even if it is only a few  
9 business days. I believe a weeks' time should be  
10 adequate because that would put us up to our  
11 funding date of December 14th, and put us in a  
12 position to put up adequate money on putting up a  
13 good faith purchase at a winning level.

14 MR. KIRPALANI: Your Honor, I  
15 misspoke earlier. The earnest money requirement  
16 that should be deposited I should have said was  
17 made during the course of the auction. It was 36  
18 hours prior to the deadline to submit the earnest  
19 money deposit. I said it was some earlier date,  
20 but that was the time, Your Honor.

21 MR. JESSOP: Good afternoon, Your  
22 Honor. Douglas Jessop on behalf of Univance Tel.  
23 There's admission pro hoc vichae, and I'm here  
24 with William Sullivan today.

1 THE COURT: It's granted.

2 MR. JESSOP: Thank you, Your Honor.

3 We are provider of the  
4 telecommunications circuits. There's been mention  
5 of cut-offs. I hear the FCC is on the line. My  
6 big question is we had objections about cures, but  
7 the question is who is going to pay from this day  
8 forward? The only person who stands to gain today  
9 is the DIP lenders. They've locked up 506, I'm  
10 sure there's super-priority administrative. Who's  
11 going to pay if there doesn't come that white  
12 knight? Who is going to carry us this there?  
13 I've not heard the DIP lender say anything, the  
14 debtor has thrown up his hands and said their  
15 hands are tied.

16 That's my sole issue. Who is going  
17 to pay? We have a right as a utility to pull the  
18 plug, and we filed a motion for adequate  
19 assurance. The debtors' response was it would be  
20 nice if we had money. But again, who is the  
21 beneficiary?

22 MR. KAROTKIN: Your Honor, it's  
23 interesting to hear the prospective bidders who  
24 had a chance last week to say let's wait another

1 week while the banks continue to finance whatever  
2 is left here at their sole expense, while these  
3 people try to put up the money. And they talk  
4 about the fact that it was a quick process, and  
5 everyone knows it was a quick process, and an  
6 unfortunate situation. And you, Your Honor, are  
7 as well aware of it as anybody.

8 But I think it's important to have  
9 the facts perfectly accurate, particularly as to  
10 what Wintel said at the auction, because they come  
11 into court today like they were surprised that  
12 they had to do anything, and they may have been  
13 surprised that they had to think about putting up  
14 money. But let's read what they said at the  
15 auction, because it was transcribed.

16 And Mr. Neumann, who was from the  
17 Blackstone Group and was the auctioneer,  
18 summarized the bid made by Wintel, and I'm going  
19 to read from the transcript if I may so there is  
20 no misunderstanding. He said, "They've agreed to  
21 deposit," he's talking about Wintel, "15 million  
22 in the same kind of escrow account by Friday at  
23 9:00 a.m."

24 And he goes on to say, "Wintel has

1 also agreed to provide evidence of \$130 million  
2 letter of credit with Citibank that could be drawn  
3 by upon by Wintel, and merely the signature of  
4 Mr. Zimmerman on behalf of Wintel, although by  
5 tomorrow," which was last Thursday, "although it  
6 should be clear that the \$15 million could come  
7 out of the \$130 million letter of credit."

8 And when he concluded his remarks, he  
9 said, "And I would ask a representative of Wintel  
10 to either state for the record that this is  
11 accurate or add or amend anything they think is  
12 appropriate." And Mr. Zimmerman, who is in the  
13 courtroom today, the principal of Wintel,  
14 responded, "We believe that to be accurate." And  
15 Mr. Kirpalani, his attorney who was just before  
16 you, stated that's correct.

17 So what we have here is last  
18 Wednesday at the auction, despite all their  
19 protestations maybe it wasn't fair and things were  
20 sprung upon them, they committed to put the money  
21 forward, and they didn't do it. This was not a  
22 surprise, no one forced them to say they would put  
23 the money forward. They stood up, and before 25  
24 or 30 people, other bidders, they said they would

1 do it, and that's why their bid was selected. It's  
2 as simple as that. This was not a big surprise.  
3 They didn't have to make promises they couldn't  
4 keep.

5 And in answer to the last gentleman  
6 that spoke, the DIP banks are not going to fund  
7 anymore money here, there is no more money to  
8 fund. It is inappropriate to keep this thing  
9 going another week at the expense of the DIP  
10 lenders. Everybody had their chance. It's sad  
11 that nobody came forward to bid, but that's where  
12 we are today. It's easy for them to say let the  
13 DIP banks continue to finance this. The fact is  
14 they had an opportunity, actually both parties  
15 committed to put the money up by Friday, and they  
16 didn't do it, and that's where we are. Those are  
17 the undisputed facts. Thank you.

18 MR. KIRPALANI: Your Honor, just  
19 briefly. I don't think we need to get into a  
20 battle of words of who said what or who made  
21 representations of offers made about bids to  
22 threaten disqualification of others if they didn't  
23 make similar attempts to use their best efforts to  
24 get the money in. I think the point the Court

1 needs to realize is there are two qualified  
2 bidders, a thousand jobs at stake, and a million  
3 customers. We need a brief adjournment for people  
4 who do their best to do business, doing due  
5 diligence 20 hours a day, to have an opportunity  
6 to save this part of the industry.

7 THE COURT: Let's hear from the FCC.

8 MR. SCHEINER: I'm Stan Scheiner in  
9 the Office of the General Counsel at FCC. I'm  
10 sorry I couldn't appear in person today, but I  
11 appreciate the opportunity to be heard.

12 If I could, I've listened carefully  
13 to everything that's been said, and I'd like to  
14 just provide about a two-minute backdrop for you,  
15 a concern that the FCC has in this proceeding.

16 We just learned about the failure of  
17 the bidding process to date this morning. We had  
18 a meeting with Winstar representatives in our  
19 offices here in Washington, and that was the first  
20 time that we understood that there was a danger  
21 that there might be a disconnection of service to  
22 customers.

23 First of all, this company, Winstar,  
24 this debtor, is regulated as a common carrier by



1 the FCC, and it has an obligation under 47 U.S.C.  
2 Section 214 to file an application for  
3 discontinuance with the FCC and provide its  
4 customers about with a certain notice period, the  
5 minimum period is 30 days, before it discontinues  
6 service. That application has not been filed to  
7 date, although we understand that they are working  
8 on it. But service cannot be discontinued by  
9 Winstar prior to that time.

10 Now, in a normal situation, that  
11 would be important as a matter of public interest,  
12 but here it's particularly important because among  
13 the customers that we're talking about, we  
14 understand that there are approximately 30,000 end  
15 user government customers, and included in that  
16 list of government customers are the Department of  
17 Justice, Bureau of Alcohol and Tobacco and  
18 Firearms, U.S. Courts, we're not sure which  
19 courts, the F.B.I., U.S. Marshal's Office,  
20 Securities and Exchange Commission, Department of  
21 Defense, and Offices of the Executive Branch.

22 Now, we do not know at this time, and  
23 Winstar was not able to tell us, exactly which of  
24 those affected agencies perform critical defense

1 mission sensitive type activity and need  
2 communications for those activities, but there  
3 certainly is a very distinct possibility that  
4 those sorts of communications would be jeopardized  
5 by a discontinuance of service.

6           So putting aside the fact that a  
7 discontinuance would be impermissible under the  
8 statute and the regulations, there may well be an  
9 emergency situation that would result from that.  
10 And the FCC is frankly scrambling to discover  
11 exactly what the consequences would be, but  
12 certainly I would say that the FCC would oppose  
13 any effort to discontinue service in any context,  
14 whether it be a conversion to Chapter 7 or any  
15 other way in which that would happen, and not  
16 insensitive to the concerns that were just  
17 expressed by the DIP lenders.

18           But at the same time, we would, I  
19 think the FCC would support whatever the Court can  
20 do to facilitate this sale going through to  
21 whomever is able to buy the assets, or any other  
22 disposition that would entail service not being  
23 discontinued to those customers. Certainly we  
24 have not had time at this point to even assess the

1 magnitude of the consequences of a discontinuance  
2 of service. So we would very strongly urge the  
3 Court, and we'd file whatever is necessary if we  
4 had the opportunity to do it, and if we're  
5 directed by Your Honor to do so. We would  
6 encourage Your Honor to find some resolution to  
7 this that would not involve a disruption of  
8 service to those important government entities.

9 THE COURT: All right. Thank you.

10 MR. SHAPIRO: Mark Shapiro from  
11 Shearman & Sterling for the debtors, Your Honor.

12 Just to comment on a couple of  
13 things, including the statement made by the FCC.

14 First, while this auction, as Your  
15 Honor knows, was highly expedited, the debtors  
16 have been shopping these assets since the  
17 summertime, so this is not something that has just  
18 been sprung on everyone. Bidders had lots and  
19 lots of opportunity, and I think all these bidders  
20 had actually been contacted by Blackstone in the  
21 process.

22 So unfortunately, while the last part  
23 of the process has been highly expedited, we've  
24 been doing this since the summertime.

1                   second, from the debtors' standpoint,  
2 we believe that we're at this point obviously as  
3 fiduciaries for the estate. We believe it was our  
4 duty to make sure we didn't show up before Your  
5 Honor today with bidders who did not have the  
6 financial wherewithal to consummate a transaction.  
7 I can think of nothing worse than dealing with an  
8 estate which appears to be administratively  
9 insolvent to keep it going for people getting paid  
10 to continue to incur administrative claims, then  
11 two, three, four weeks later find out that the  
12 bidders have no money.

13                   And I was personally not prepared to  
14 allow that to happen, and that's why when we  
15 reviewed the financial commitments of the two  
16 bidders that spoke before Your Honor today, given  
17 I'll call it the lack of credibility of those  
18 commitments and the places they were coming from  
19 and our inability to determine the transparency of  
20 it, we determined that the easiest and simplest  
21 solution be to require that they put up a modest  
22 amount of cash, \$15 million, relative to the size  
23 of this transaction including greater assumption  
24 of liabilities did not seem to be a burdensome

1 requirement had we given them a couple of days to  
2 do so.

3           Unfortunately, they were unable to do  
4 so. From that standpoint, we believe we've done  
5 everything we could do. We spent hours late,  
6 late, late into every evening negotiating on  
7 bidders on the contract until 1:00, 2:00 in the  
8 morning every day last week, and from the  
9 professional standpoint, we believe we did the  
10 fairest thing we could, and we believe we came up  
11 short.

12           With respect to the FCC, I have been  
13 told that there is a 30-day requirement under the  
14 FCC regulations. Unfortunately, the debtor does  
15 not have cash the banks are willing to let us use  
16 in order to allow 30 days to go by.

17           However, what we are going to be  
18 asking the Court to consider, what my partner  
19 Mr. Wade will talk about, is a temporary  
20 restraining order which will give us a short  
21 period of time to migrate off the system as  
22 quickly as possible. Debtors do not intend to  
23 cause any arm harm to its customers, and this  
24 would allow them to migrate off the system as

1 quickly as possible, and this will allow hopefully  
2 the customers to do so with a minimum amount of  
3 harm caused to those customers.

4 THE COURT: All right. What would it  
5 cost the DIP lender in loss to maintain you  
6 through one week?

7 MR. SHAPIRO: I am told, because  
8 we're in the first week of the month, I am being  
9 told that it's at least \$8 million of cash out the  
10 door today or tomorrow, if we had to make  
11 payments. Because we'd have to make payroll, we'd  
12 have to make payments to our landlords for the  
13 next month of operations, we'd have to make  
14 payments to a number of telecommunications  
15 carriers who we have entered into court ordered  
16 stipulations with. So if we don't make those  
17 payments, they have the right to terminate us  
18 immediately.

19 We've already received notices of  
20 termination from a number of them, all of which  
21 lapse today or in the next 24, 48 hours. So I've  
22 been notified by Impala Partners it's at least \$8  
23 million if we have to make payments this week.

24 THE COURT: On the record before me,

1 I find that the very interests that are presented  
2 here can't be resolved today in any definitive  
3 way, but that the position offered by the FCC  
4 trumps everybody else's position, that is the 30-  
5 day notice.

6 And I'm going to continue this  
7 hearing until next Monday, and I'll give you a  
8 time. I'm going to defer consideration of the  
9 proposed TRO until next Monday and send the  
10 debtor, the DIP lender, and the two apparent live  
11 bidders to a discussion of where you'll be next  
12 Monday. And if it costs \$8 million to get to next  
13 Monday out of this estate, it will cost \$8  
14 million. It seems to me that the FCC's position  
15 weighs heavily in granting this adjournment, and  
16 particularly weighed is the subscribers. But it  
17 wouldn't be able to be terminated for 30 days  
18 anyway.

19 MR. SHAPIRO: One issue is we don't  
20 actually have the \$8 million. That's what it  
21 would cost to make the payment. Based on my  
22 understanding, and we could bring up Paul Street,  
23 who is the chief restructuring officer, and Your  
24 Honor would like to hear from him. My

1 understanding is the debtors don't actually have  
2 and will not have projection this week of that  
3 amount of cash to make those payments, and  
4 therefore, I believe what would happen, assuming  
5 that we don't have the cash to make the payments,  
6 is you would be having potentially people working  
7 without pay, which would not be a good thing and  
8 actually could be criminal actually, number one,  
9 and number two, we would end up having --

10 THE COURT: You know what's criminal?  
11 If you can get a \$100 million deal and it takes  
12 one week and you don't get it, that's criminal.

13 MR. SHAPIRO: I guess we'll have to  
14 talk to the DIP lenders, Your Honor.

15 THE COURT: To cut thousands of  
16 subscribers off prematurely without the  
17 opportunity to go to another subscriber, that's  
18 criminal. To keep people on and lie and pretend  
19 to be a Chapter 11 case where you might well have  
20 been a Chapter 7 case months ago, that's criminal.  
21 Coming up with the \$8 million which I believe one  
22 of these two bidders will step up, and I believe  
23 the time limits put people off, and that puts us  
24 where we are today. There may be other ways to



1 produce those funds if you sit and talk about it.

2 MR. SHAPIRO: Your Honor, we will sit  
3 down with the DIP lenders and discuss it. And  
4 others.

5 THE COURT: And others.

6 Ms. Morgan, I'll give you a time for  
7 next Monday. I'll have to look at my schedule  
8 more clearly.

9 MR. WADE: I also understood what you  
10 said about the TRO, but let me make one statement  
11 concerning that. The temporary restraining order  
12 we were seeking does not involve whether Winstar  
13 cuts off customers or --

14 THE COURT: It keeps the utilities  
15 from cutting them off.

16 MR. WADE: It keeps the verizons and  
17 FCCs and Qwests of the world from doing that.  
18 They have a right to do that. What this motion  
19 tries to do is to prevent that from happening.  
20 What I would like to do --

21 THE COURT: If they want to be paid  
22 the arrearages and you have conversations with  
23 them and you're not successful, you get back to  
24 me.

1 MR. WADE: Okay.

2 THE COURT: They have as much to lose  
3 if there's not a consummated sale as anybody in  
4 the transaction, and if you can't talk reasonably  
5 with them on a business level, then you get back  
6 to me and we'll see what a court order does.

7 MR. SHAPIRO: Paul street would like  
8 to address the Court.

9 THE COURT: Sure.

10 MR. STREET: Thank you, Your Honor.  
11 My name is Paul Street, I'm with Impala Partners;  
12 I'm not an attorney.

13 The question of the FCC notice  
14 clearly trumps all the other considerations. The  
15 point about the notice is that it begins when we  
16 serve notice on customers. We were planning to do  
17 that tomorrow and the following day. If we  
18 postpone that for another week while the bidders  
19 attempt to get their funds in place, we then still  
20 have a 30-day notice period, so it's not just the  
21 week, it's 30 days as a moving number.

22 On the other hand, if we send out the  
23 notices tomorrow, which would be a reasonable  
24 thing to do, the value of the company as a

1 commercial enterprise would be likely to be  
2 greatly diminished because customers will migrate  
3 as quickly as they can to other providers. While  
4 we fully agree and we have from the outset said  
5 that complying with the FCC 30-day notice  
6 requirement is essential in the public interest,  
7 it needs to begin. And it is my view, and I'm not  
8 really an expert on the code, I specialize in what  
9 companies do, we need to do that right away.

10 The other thing, Your Honor, is we  
11 could continue to provide an adequate level of  
12 service to our existing customers during the  
13 migration period with a payroll of less than a  
14 hundred people. We currently have 750 people.  
15 That additional 650 people is a liability to the  
16 estate that we are undertaking without the certain  
17 knowledge that we would be able to pay people for  
18 hours worked, which my very limited legal  
19 knowledge I'm told is a criminal matter. We are  
20 reluctant to undertake that without express  
21 instructions from Your Honor.

22 Furthermore, Your Honor, we don't  
23 actually have in the company the \$8 million. The  
24 company's position, roughly speaking, and I don't

1 have the numbers in front of me, is there's  
2 \$6 million in the bank. And earned payroll to  
3 date is about \$3 million, which means we have \$3  
4 million available. On Friday, we were served the  
5 termination notice of Williams Communication by  
6 700-some thousand. Today is the fifth day and  
7 expiration today of a termination notice of Qwest  
8 Communications, I believe the amount owed to them  
9 is \$3 million. Those two alone would require more  
10 than our current cash reserves. Our total rent  
11 for the antennas, hub sites, and office premises  
12 is \$3 million. No landlords have been paid for  
13 the month of December.

14 Also, every day we accrue  
15 approximately \$700,00 of payroll, and we have a  
16 number of expenses that would come due this week,  
17 and we don't physically have any money. So if  
18 this were to work, ignoring the fact that it's \$8  
19 million that's potentially lost to the estate,  
20 which is my concern as a fiduciary, we don't have  
21 a source for the \$8 million.

22 As we stand here now, we have \$3  
23 million of available cash, and at least, not less  
24 than \$8 million expenses. That presumes we don't

1 get anymore termination notices. We had a case  
2 in Detroit at a vital hub site, subscribers went  
3 dark, in that case we were able to remedy it.

4 We don't have the flexibility to  
5 comply with your order, actual cash injection. So  
6 what we have recommended was that we go down to  
7 the 75 to 100 percent payroll, much lower expense  
8 level, and serve notice on our customers that they  
9 have 30 days to migrate, and try to, if you want a  
10 better word, muddle through with the amount of  
11 money we currently have at our disposal.

12 THE COURT: That's not a plan I find  
13 acceptable.

14 MR. STREET: Respectfully, Your  
15 Honor, we don't have any other source of money.

16 THE COURT: I don't have the \$8  
17 million today, and what I suggested earlier is  
18 that you sit down and talk with the folks that  
19 want to be live bidders, talk with your bank, talk  
20 with the other service people, and try to resolve  
21 it in a business manner. And what you're telling  
22 me is "I can't do what you're ordering me to do,  
23 Judge, so I'm just going to shut it down."

24 MR. STREET: Your Honor, I'm not

1 saying that. I'm saying but how do I meet these  
2 requirements? I'm a restructuring officer,  
3 there's a chief executive officer of the company.

4 THE COURT: If you need to get me  
5 involved with all the sophisticated talent sitting  
6 around, I would be surprised.

7 MR. STREET: Do we send out the  
8 notices to our customers tomorrow?

9 THE COURT: I wouldn't do that,  
10 because you'll defeat the whole purpose of the one  
11 week continuance.

12 MR. STREET: I'm asking this because  
13 I need to get instructions from the Court.

14 THE COURT: And I certainly wouldn't  
15 order you to do that, because I would think that  
16 would contravene what I'm ordering.

17 MR. STREET: Similarly, you would  
18 not like us to reduce the payroll by approximately  
19 600 people?

20 THE COURT: Unless you have the  
21 agreement of the two live bidders, I would  
22 consider that contravening what I would do.

23 MR. SCHEINER: Your Honor, this is  
24 Stan Scheiner from the FCC.

1 With respect to the notice, I want to  
2 make a point, and I also want to correct one thing  
3 that the gentleman said. The 30-day period begins  
4 to run under the regulations from the date that  
5 the FCC issues its public notice. In a case like  
6 this, that would be done on an extremely expedited  
7 basis within hours of receiving the discontinuance  
8 application from the provider.

9 As to whether the notice ought to be  
10 given to customers, I do think that's a very  
11 difficult question, because I think we appreciate  
12 that there's an attempted reorganization here and  
13 an attempted sale, and we don't want to do  
14 anything to undercut that.

15 On the other hand, I can tell you in  
16 other cases what's happened is that the carrier  
17 has, in order to make sure that the customers have  
18 adequate notice or as much notice as they can, the  
19 carrier has provided the notice but at the same  
20 time has said this is something we're doing  
21 because the regulations require us to and because  
22 there is a very -- and because there is a  
23 possibility that service will have to be  
24 discontinued, but at the same time, we feel

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1 somewhat confident that there is a sale that's  
2 going through. And that would sort of place the  
3 decision as to whether to migrate or whether to  
4 pay and trust that the sale would go through on  
5 the customers. In a case of a customer that was  
6 providing essential communications services, for  
7 example, you know, the Department of Defense  
8 working on some very important matter, it might be  
9 critical that they know that.

10 Now, in this case, I can tell you  
11 that whether a notice of discontinuance is sent to  
12 customers and whether an application is filed or  
13 not, the FCC plans to be convening a round table  
14 with the effective agencies, and they will  
15 effectively have notice. But I wanted to give you  
16 that bit of information so you would have it.

17 THE COURT: As I understand it, once  
18 they receive notice, they can move on.

19 MR. SCHEINER: That's true.

20 THE COURT: I've already decided that  
21 next Monday is time enough for customers to get  
22 notice.

23 MR. SCHEINER: Thank you very much,  
24 Your Honor.



1 THE COURT: Thank you.

2 MS. SILVERSTEIN: Laurie Silverstein  
3 on behalf of certain affiliates from the SBC  
4 Communications. We had filed an emergency motion  
5 with respect to --

6 THE COURT: You wanted your  
7 stipulation signed?

8 MS. SILVERSTEIN: Yes, Your Honor.

9 THE COURT: I signed one from AT&T in  
10 the interim. If you'll work with the clerk, I'll  
11 get that signed.

12 MS. SILVERSTEIN: Thank you very  
13 much, Your Honor.

14 MR. JESSOP: We have not gotten a  
15 stipulation, and for adequate assurance, in light  
16 of everything, we're not going to have any money  
17 to pay adequate assurance anyway, so we're going  
18 to have to wait until Monday.

19 THE COURT: we're going to be flush  
20 on Monday.

21 MR. JESSOP: We ask that our motion  
22 is continued until Monday.

23 MS. MILLER: Kathy Miller, Smith,  
24 Katzenstein & Furlow on behalf of Verizon. We'll

1 make comments and have the business people talk  
2 and work things out. If it can't be and the  
3 debtor is going to go forward, now they know who  
4 we are, we ask that we get service of that and ask  
5 that we reply.

6 MR. WADE: Of course.

7 MR. SHAPIRO: One other thing in  
8 terms of the bidders. The two bidders who are  
9 here, and there were other bidders who I don't  
10 think are here today. But my concern still  
11 remains with respect to entering into discussions  
12 with them, which obviously we will do immediately  
13 after leaving here, that they have been telling us  
14 every single day that the money will be coming,  
15 and unfortunately the money has not come yet. And  
16 I would prefer if we did not have to wait until  
17 next Monday to see if they have money.

18 THE COURT: Here's what I'm going to  
19 do. I'm going to talk with two of debtors'  
20 counsel and counsel for two of the live bidders  
21 present, and we can do that after the hearing so  
22 all these folks don't have to be tied up. And  
23 we'll make it clear what the understanding should  
24 be under the court orders that are in place, and

1       what we expect by next Monday.

2               MR. SHAPIRO:   Thank you, Your Honor.

3               MR. CHIPMAN:   Good afternoon, Your  
4       Honor.   William Chipman on behalf of Microsoft.  
5       We filed an objection to the sale that we had, I  
6       guess, carved out a little piece of the relief  
7       requested.   You had overruled that objection.   Are  
8       we now continuing that objection, or do I need to  
9       refile it?   If the sale gets approved --

10              THE COURT:   That's a good point.   Any  
11       objection to the sale other than to Office.com,  
12       you're talking about the --

13              MR. CHIPMAN:   Our issue is not only  
14       cure amount but the licenses --

15              THE COURT:   I understand, and there's  
16       many of those.   They're all continued.   Any  
17       objection that goes directly to the Office.com  
18       objection is overruled, and that ruling stands.  
19       All other objections to the transaction left after  
20       the Office.com are continued.

21              MR. CHIPMAN:   Thank you, Your Honor.

22              THE COURT:   We'll be in recess.

23                       (The hearing adjourned at 4:00 p.m.)

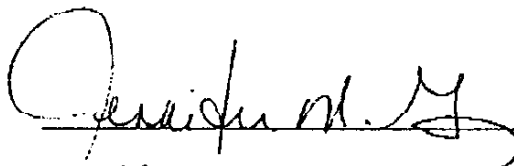
24

1 State of Delaware )  
2 )  
3 New Castle County )  
4

5 CERTIFICATE OF REPORTER  
6

7 I, Jennifer M. Guy, Professional  
8 Reporter and Notary Public, do hereby certify that  
9 the foregoing record, pages 1 to 66 inclusive, is  
10 a true and accurate transcript of my stenographic  
11 notes taken on December 10, 2001, in the  
12 above-captioned matter.  
13

14 IN WITNESS WHEREOF, I have hereunto  
15 set my hand and seal this 11th day of December,  
16 2001, at Wilmington.  
17

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